

FILED

JUN 19 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GABRIEL RUIZ-CHAVEZ,

Defendant - Appellant.

No. 05-50239

D.C. No. CR-05-00041-IEG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Submitted June 12, 2006^{**}

Before: KLEINFELD, PAEZ, and BERZON, Circuit Judges.

Gabriel Ruiz-Chavez appeals from the 21-month sentence imposed following his guilty plea conviction for being a deported alien found in the United

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

States in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

Ruiz-Chavez contends that the two-year supervised release portion of his sentence imposed by the district court is in error because the fact of his prior conviction needed to be charged in the indictment and proven to a jury beyond a reasonable doubt. This contention is foreclosed by *United States v.*

Esparza-Gonzalez, 422 F.3d 897, 907 (9th Cir. 2005), and *United States v.*

Weiland, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005).

AFFIRMED.